IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.351 OF 2007
IN
APPEAL FROM ORDER NO.236 OF 2007

Vivek Ramkrishna Haelshetty & Ors. ...Applicants

vs.

Jayant K. Thakur & Anr. ...Respondents

Mr.S.B.Prabhavalkar for the Applicants
Mr.G.S.Godbole i/b M/s.Narayanan & Narayanan for Respondents

CORAM: A.S.OKA,J.
DATE : APRIL 3,2007.

P.C.:

1. Rule. The Advocate for the Respondents waive service. Taken up for hearing forthwith. By the impugned Judgment the plaint filed by the Applicants/Appellants has been ordered to be returned on the ground that the suit is barred by section 42 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. The case of the Appellants is that they were in possession of one Maruti Temple on the suit plot. According to the case of the Applicants/Appellants, the area of the temple was 40 feet X 30 feet. According to the case of the Appellants, the Respondents have demolished the said temple without following due process of law. Initially, a suit was filed for perpetual injunction restraining the Respondents from disturbing the possession of the Applicants of the portion of land admeasuring 443 sq.meter. By amending the plaint, a prayer for reconstruction of temple having dimension of 40 X 30 feet has been incorporated. A Notice of

Motion was taken out by the Appellants for temporary injunction preventing the Respondents from making any construction on the land.

2. The learned Advocate for the Applicants submitted that the temple structure has been demolished by the Respondents by taking the law in their hands and therefore, at this stage, the temple structure admeasuring 396 sq. feet has to be restored. He pointed out the prima facie finding recorded by the Trial Court that area of the temple was 396 sq.feet. He submits that the construction cannot be allowed to proceed on the area on which the temple was situated.

3. The first Respondent has tendered an Affidavit cum undertaking in which it is stated thus :

"3. I submit that without prejudice to my rights and contentions hearing and final disposal of the Appeal from Order, I agree and undertake to get sanctioned from the Slum Rehabilitation Authority a tenement on the ground floor at the location approximating the place where the temple formerly stood, as indicated in the tentative plan annexed hereto, and marked Exh.‘1’ a premises admeasuring approximately 400 sq.ft. carpet area. I shall keep the said premises unsold and available for allotment to the Appellants should they

succeed at the final hearing of the suit from which the present Appeal is filed."

4. The Trial Court has recorded a finding that the first Respondent is implementing a slum redevelopment scheme for the benefit of the members of the second Respondent. A prima facie finding has been recorded that out of 34 structures, occupiers of 26 structures have been held to be eligible for allotment of permanent accommodation out of which 25 persons have shown their willingness to join the scheme. The learned trial Judge has recorded that an offer was given by the respondents to the Appellants to the effect that though the Appellants have been held eligible for area of 225 sq. feet in redevelopment scheme, they are willing to provide more area to the Appellants. The learned trial Judge has noted that the said offer was not accepted as the Appellants want a separate structure to be constructed for the temple.

5. If any interim relief prohibiting the construction is to be granted, it will affect several persons who are the beneficiaries under the Slum Rehabilitation Scheme. Now, an undertaking has been given by the first Respondent to provide a tenement admeasuring about 400 sq.feet of carpet area on the ground floor of the newly constructed building and that the said tenement will be kept unsold till the final disposal of the suit.

6. There is a finding recorded against the Appellants that the suit is hit by section 42 of the said Act of 1971. The question whether Appellants are entitled to area exceeding 225 sq.feet will be decided at the time of final disposal of the suit. As of today, interests of the Appellants are sufficiently protected by the undertaking which is filed on record by the first Respondent.

7. The grant of any interim relief at this stage will affect the implementation of the Slum Rehabilitation Scheme and therefore, prayer for interim relief cannot be granted.

8. Hence, Application is disposed of by passing the following order ;

i) Undertaking of the first Respondent which is marked ‘X’ for identification is accepted.

ii) In view of the undertaking, the Respondents are directed to ensure that an approval is granted to a building plan which will provide for a tenement admeasuring approximately 400 sq.feet of carpet area on the ground floor at the location approximating the place where the temple formerly stood as indicated in the plan annexed to the undertaking. If the approval

is granted by the concerned Authority for such a tenement, the Respondents shall keep the said tenement unalienated and unoccupied till the final disposal of the suit.

iii) If approval is not granted by the concerned Authority for constructing the tenement as proposed in the undertaking, the Respondents will forthwith bring the said fact to the notice of the court by filing an Affidavit.

9. Save and except what is stated above, the prayers in the Application are rejected.

10. At this stage, the learned Counsel for the Appellants prays that ad-interim relief granted on 15th March 2007 may be continued for a period of four weeks to enable the Applicants to approach the higher court. The learned counsel for the Respondents opposed the said prayer by contending that the entire rehabilitation scheme will be affected.

11. Considering the ad-interim relief granted on 15th March 2007, the same is extended for a period of four weeks from today. No further extension will be granted.

JUDGE

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